Division Bench

(6)

(X)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 5019 Of 2005.

PETITIONERS :- 1. Central Excise Group 'B' Executive Officers Association, Raipur through it's President, Anand Kishore, S/o Late Shri Jitendra Prasad, aged about 45 years, House No. 2, Steel Colony, Bhilai (C.G.),

2. Sanjay Thul, S/o Shri G.S. Thul, aged 40 years, MIG 774, Veer Sawarkar Nagar, Hirapur, Raipur, Chhattisgarh, General Secretary, Central Excise Group 'B' Executive Officers Association, Raipur (Chhattisgarh),

3. M.K. Shukla, S/o Shri Bhagwat Prasad Shukla, aged 55 years, Superintendent, Central Excise, Hqrs. Raipur (Chhattisgarh),

4. Prakash K.. Chouhan, S/o Shri P.K. Chouhan, aged 51 years, Superintendent, Central Excise, Hqrs. Raipur (Chhattisgarh),

5. S.L. Tirki, S/o Shri Benzamin Tirki, aged 49 years, Superintendent, Central Excise, Range-Raigarh, Raigarh (Chhattisgarh),

6. R.S.P. Gupta, S/o Shri V.P. Gupta, aged 47 years, Superintendent, Central Excise, Hqrs. Raipur (Chhattisgarh),

7. B.R.K. Iyer, S/o Shri M.R. Balasubramaniam, aged 48 years, Superintendent, Central Excise, Division

P.R. No. 5063/05
Presented by Shri J.K. Sharma
dated 27/9/05

No.1, Bhilai, District Durg (Chhattisgarh).

V E R S U S

RESPONDENTS :-

1. Union of India, Through Revenue Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi,
2. Chairman, Central Board of Excise and Customs, North Block, New Delhi,
3. Chief Commissioner, Customs and Excise, M.P. and Chhattisgarh, 48, Administrative Area, Arera Hills, Bhopal. M.P.,
4. Central Administrative Tribunal, Carves Building, Civil Lines, Jabalpur (Madhya Pradesh).

PETITION UNDER ARTICLE 226 & 227 OF CONSTITUTION OF INDIA

(91)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 5019/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri.V.K. Shrivastava, J &
Hon'ble Shri Dhirendra Mishra, J

6-12-2006

Shri H.B. Agrawal, Sr. Advocate with Shri J.K. Gupta, counsel for the petitioners.

Shri Vinod Deshmukh, counsel for respondents No.1 to 3.

None for respondent No.4.

Heard.

Chief Commissioner of Customs & Central Excise, Bhopal, vide office order No.1/2005 dated 31-3-2005 transferred petitioners No.3 to 7 from Raipur Commissionerate to Nagpur Commissionerate. The order was assailed before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (henceforth "the Tribunal") who vide order dated 13-9-2005 passed in O.A.No.673/2005 dismissed the application. Hence, this writ petition.

Petitioners No.3 to 7 were working in Raipur Commissionerate in the grade of Superintendent of Customs and Central Excise. All of them were transferred from Raipur Commissionerate to Nagpur Commissionerate vide office order No.1/2005 dated 31-3-2005 (supra). Petitioners claim is that except under certain exceptions inter Commissionerate transfer has been banned by Government of India, Ministry of Finance, Department of Revenue, vide circular dated 19-2-2004, but defying those instructions these transfers without any competence have been made. Chief Commissioner of Customs &

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 5019/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Central Excise thereafter issued a circular dated 31-3-2005 and adopted interim measure for inter Commissionerate transfer against the policy issued by the Government of India and thereafter enforced the transfer order. The validity and propriety of the order was assailed before the Tribunal who decided the dispute against the petitioners and dismissed their original application.

Learned senior counsel for the petitioner contended that vide guidelines dated 19-2-2004 inter Commissionerate transfer subject to certain exceptions were allowed for officials of Group B, C or D and the case of petitioners No.3 to 7 does not fall within those exceptions. On the other hand, learned counsel for the respondents opposed the same and took shelter of Government's order dated 9-3-2004 (Annexure-P/8).

Perusal of Annexure-P/8, clearly establishes that where no loss of seniority involved, transfer policy as was earlier prevalent was to continue. Petitioners failed to show how the impugned transfer effects their seniority.

Second contention of the petitioners is that Chief Commissioner who issued the transfer order has no jurisdiction to order inter Commissionerate transfer. The said contention has no leg to stand as Government's order dated 16-1-2003 (Annexure-P/9); empowers to monitoring the implementation of the Board's instructions with regard to transfers and equitable distribution of manpower and material resources between Commissionerates/Zones to Chief Commissioner. This dispute has also been discussed at para 7 of the impugned

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...WP 5019/05... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order and it appears that functions and powers as defined in the instrument issued by Central Board of Excise and Customs authorizes Chief Commissioner for inter Commissionerate transfer in respect of common cadre Commissionerate in his charge and it is not in dispute that the Chief Commissioner herein involved is in-charge of common cadre Commissionerate. Even otherwise, it appears that the transfer order was passed with the approval of the Chairman, CBEC, New Delhi.

No other contentions have been raised by the petitioners during the course of arguments.

It is settled that the Courts/Tribunals generally should not interfere in the cases of transfer unless the transfer is *mala fide* or in violation of the statutory rules or it is made beyond the powers of the competent authority.

Here in the instant case, the transfer order passed by the Chief Commissioner is well within its competence and that was neither passed with *mala fide* intention nor in violation of the statutory rules or directions.

We are of considered opinion that the Tribunal did not commit any error or illegality, which may call for interference.

In the result, the petition having no force is liable to be dismissed and is accordingly dismissed.

Consequently, I.A.Nos.9369/2005 & 10979/2006 stand disposed of.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge